BACKROUND PAPER
Public consultation process respecting
regulations under *The Red River Floodway Act*

Manitoba Water Stewardship and Manitoba Intergovernmental Affairs are holding public consultations for residents potentially affected by *The Red River Floodway Act*'s regulations. Since the 1997 flood, the issue of compensation for artificial flooding has been a major concern for residents of the Red River Valley. The issue was raised during the International Joint Commission Task Force's public hearings and, most recently, during the Manitoba Clean Environment Commission hearings on the floodway expansion project. *The Red River Floodway Act* was proclaimed in June, 2005.

Part 2 of *The Red River Floodway Act* provides compensation for residents who suffered property damage or economic losses from artificial flooding caused by the operation of the floodway. Part 4 of the act requires the provincial government to prepare a report on floodway operation and its effects each year it uses the floodway to control river levels.

Proposed Regulations:

Manitoba Water Stewardship is proposing two new sets of regulations under *The Red River Floodway Act* (C.C.S.M. c.R32). The first applies to compensation for the damage to property and economic loss caused by artificial spring flooding. The second will address the floodway operations report.

The Red River Floodway Act defines *artificial flooding* as "flooding caused by floodway operations during spring flooding and where the Red River exceeds its natural level at the time of the event." *Spring flooding* is defined as the "annual seasonal increase in the water level of the Red River resulting from melted snow or run-off from a combination of melted snow and rainwater." The *natural level* is defined as "the scientifically demonstrable water level that would be expected in the Red River at a given time during spring flooding in the absence of the floodway, the Assiniboine River Diversion, the Assiniboine River dikes, the Shellmouth Dam, the primary dikes in the City of Winnipeg, and urban development in the area protected by the floodway since its design was finalized."

The act allows the Lieutenant-Governor to make regulations for floodway operations reports (Section 13(i)) and compensation for economic loss or property damage caused by artificial spring flooding due to floodway operation.

The regulation covering compensation is intended to address the following:

- compensation application procedure
- time for submitting a claim
- claimants' responsibilities
- valuation of property damage
- valuation of economic loss
- claim processing and inspection of damaged property
- the compensation process including payment
- appeal process to the Disaster Assistance Appeal Board

The regulation covering operations reporting of the floodway is intended to address:

- survey plans that show which land makes up the Red River Floodway
- the basic content of the report on the operations of the floodway
- the content required when artificial flooding occurred, including information such as:
    - date and duration of artificial flooding
    - an explanation of why the river exceeded its natural level
    - a map showing the maximum extent and depths of artificial flooding
- the public availability of the report

Key Principles of the Proposed Regulations:

A. ***Red River Floodway Regulation***

The regulation will outline the information to be included in the floodway operations report, such as:

- a statement of the period being reported on
- a statement that the floodway was operated during this period because of spring flooding
- a statement as to whether artificial flooding was caused during this period
- a description of the causes of spring flooding and its duration
- a description of floodway structure operations and any technical issues that may have arisen during operation
- a tabulation showing floodway gate adjustments (including date and time of adjustment)
- a tabulation showing actual and computed natural flows for the Red River for the full period of operation at the floodway channel entrance and James Avenue (City of Winnipeg)
- a tabulation showing actual and computed natural river levels for the Red River for the full period of operation at the floodway channel entrance and James Avenue
- a tabulation showing actual and computed natural river levels for the Assiniboine River for the full period of operation at its confluence with the Red River

If artificial flooding has occurred during this period, the report will also contain information on:

- date and approximate duration of artificial flooding
- why the Red River exceeded its natural level
- map showing maximum extent and depths of artificial flooding in the Red River Valley

The regulation will also require floodway operation reports to be made public promptly with information about its availability placed:

- in the public registry system
- on the Internet home page of Manitoba Water Stewardship
- in t Manitoba Water Stewardship offices

B. *Floodway Compensation Regulation*

Process for compensation:
The regulation will outline the compensation process for artificial spring flooding caused by operating the floodway. The process will require:

- claimants to submit an application to Manitoba Emergency Measures Organization (EMO)using an approved form and including a preliminary estimate of the value of damage or loss
- claimants must, for damage to real or personal property, show that the eligible property sections of the act are satisfied:
  - eligible property refers to property that is damaged in Manitoba
  - the person owns the property or has the right to claim compensation to the property
  - all applicable flood proofing criteria for the damaged property or land, building or structure were complied with
- claims must be submitted to EMO within 90 days after the day on which the floodway operations report is made public

Compensation for property damage:
The regulation states that compensation for property damage would address the following:

- Compensation will be based on the lesser of repair cost or replacement cost
  - *repair cost* means the cost to repair or restore damaged real or personal property to a condition most closely resembling its pre-damage condition using material of a similar kind, quality and construction without deducting for depreciation
  - *replacement cost* means the cost to replace damaged real or personal property with property of a similar kind, quality and construction without deducting for depreciation
- If the item is a one-of-a-kind item or is not easily replaced, EMO will determine the appropriate value
- Compensation will not include any upgrades, improvements or enhancements unless they are necessary to comply with building codes or conform to standards.
- Any compensation will be reduced, based on any salvage value.

Compensation for economic loss:
The regulation will set the compensation for economic loss. This is intended to include compensation for lost wages, salaries or business income, and any extraordinary costs or expenses to work or carry on business.

Claimants' responsibilities:
Claimants will also have certain responsibilities under the regulation. These include:

- take all reasonable measures to prevent further property damage
- return to work or begin normal business operations as soon as possible after the flooding
- document evidence of flood levels, damages, temporary repairs made, any thing disposed of, etc.

- document all expenses that are being claimed
- allow EMO to inspect the property and have access to documents or financial records, etc., as required
- provide enough information to assess the amount of lost wages, salary, business income, etc.

Responsibilities of EMO:
The regulation will outline the responsibilities of EMO, which include:
- inspect the property, obtain relevant information to identify the damaged property and assess the value of damage
- review the preliminary estimate of the value of the damages or losses with the claimant
- provide claimant with a compensation statement that provides the following:
  - the amount of compensation to be provided
  - the calculation of the compensation
  - an explanation of the compensation amount
  - terms, conditions and declaration to release payment

Appeal process:
- The regulation will also set out the process of an appeal to the Disaster Assistance Appeal Board if a claimant doesn't agree with the compensation amount offered.

Public Consultation Process

Manitoba Water Stewardship and Manitoba Intergovernmental Affairs will be holding public meetings to present the concepts and ideas in the two regulations and get public response. Meetings will be held in St. Adolphe, Ste. Agathe and Howden Community Centre March, 2006.

Community	Date	Time	
		Open House	Workshop
St. Adolphe Club Amical	March 4	10:00 – 11:00	11:00 – 2:00
Howden Community Centre 1078 Red River Drive	March 6	5:00 – 6:00	6:00 – 9:00
Ste. Agathe Community Hall	March 11	10:00 – 11:00	11:00 – 2:00

Information presented at the public meetings will be available on Manitoba Water Stewardship's website http://www.gov.mb.ca/waterstewardship/ by March 25, 2006. After the meetings, Manitoba Water Stewardship will write and distribute a document outlining what happened at the consultations ("What You Told Us"). The regulation will be drafted after the public consultations, with an anticipated completion date of April 15, 2006.

The attached questions and answers address a number of issues about the proposed regulations.

Regulations under *The Red River Floodway Act*

QUESTIONS & ANSWERS

1. **Q: What does The Red River Floodway Act address?**

A: The act provides compensation to residents who suffer flood damage and economic loss caused by artificial spring flooding (Part 2). Artificial spring flooding is defined in the act as flooding that is caused by floodway operation during spring flooding and in which the Red River exceeds its natural level. It authorizes water storage on land if there's an extreme spring flood (Part 3). It also requires a floodway operations report, on or before June 30, each year the floodway is operated during spring flooding (Part 4).

2. **Q: Who and what is covered by compensation in the legislation?**

A: Individuals, farms and businesses, non-profit organizations and local authorities are covered, if they have damage to real or personal property or economic loss caused by artificial spring flooding of the Red River south of Winnipeg. The damage or loss must result from spring flooding that would not have occurred if the floodway and flood-control infrastructure had not been used to control river levels.

3. **Q: What is artificial flooding?**

A: Artificial flooding means flooding caused by floodway operation during spring flooding, when the Red River exceeds its natural level.

4. **Q: What is the Red River's natural water level and how is it determined?**

A: It is the natural water level that would be expected to occur if the floodway and other flood-prevention structures (including the Portage Diversion and the Shellmouth Dam) didn't exist. This is a key concept for both floodway operation and compensation, so its calculation must be made on the basis of credible scientific evidence.

5. **Q: Who determines if artificial flooding has occurred?**

A: Manitoba Water Stewardship is responsible for determining if artificial flooding has occurred and the extent of it. A regulation covering floodway operations reports will outline the basic information that must be contained in them. If artificial flooding was caused in the period reported on, the report will contain additional information such as:

- the date and duration of artificial flooding
- explanation of why the Red River exceeded its natural levels
- a map showing the maximum extent and maximum depths of artificial flooding

The report must be completed, on or before June 30, each year the floodway is operated.

As a condition of Manitoba Water Stewardship's and the Manitoba Floodway's Environmental Licence for the construction, maintenance and operation of the Red River Floodway, in each year in which a probable event of artificial flooding occurs during the spring operation of the Floodway, Water Stewardship must commission an independent third party review of the report prepared by Water Stewardship pursuant to the Red River Floodway Act. This report must be completed and provided to the Director of Environmental Approvals within one month of the completion of Water Stewardship's report on operations of the Floodway.

6. **Q: How do I get a copy of the floodway operations report?**
A: The act states the report must be made available to the public, and the new regulations outline how this is to be done:

- A notice of availability will be put in locations such as the public registry maintained by Manitoba Conservation
- The Winnipeg head office and regional offices of Manitoba Water Stewardship will have copies
- It will be posted on the home page of Manitoba Water Stewardship website.

7. **Q: What does Disaster Financial Assistance (DFA) have to do with compensation?**
A: Compensation under the act will supplement compensation available through the Disaster Financial Assistance program. However, Emergency Measures Manitoba (EMO) will administer both programs. The claims process from both agencies will be integrated into a single process under EMO.

8. **Q: How does this legislation affect crop insurance?**
A: The act provides compensation for property damage and economic loss caused by artificial flooding during spring floodway operation which will likely be before seeding. Crop insurance addresses seeded and unseeded crop losses due to natural events in the growing season. To the extent that they're not covered by crop insurance, economic losses from delayed seeding (because of artificial flooding) would be covered by the legislation.

9. **Q: What types of damage and loss are covered by the compensation regulation?**
A: All property damage and economic loss, directly caused by artificial spring flooding in Manitoba, are covered with no claim ceiling and no deductible. Economic loss includes extraordinary work or business expenses and/or income lost because the claimant can't work or carry on business. Claimants must comply with all applicable flood-proofing criteria (defined in the *Designated Flood Area Regulation*).

10. **Q: How will property damages be assessed for compensation?**
A: Damage assessment will be based on the lesser of the repair or replacement cost. Repair refers to the cost to repair or restore damaged real or personal property to a condition most closely resembling its pre-damage condition, using materials of a similar kind, quality and construction. Replacement cost refers to the cost to replace the damaged real or personal property with property of a similar kind, quality and construction.

Real or personal property must be damaged by artificial spring flooding in the Red River Valley. Property includes all property physically destroyed or damaged (Ex: made inoperable, less useful, less valuable, etc.). Compensation does not include the cost of improvements, upgrades or enhancements, unless they are necessary to comply with prevailing building codes.

11. **Q: Must claimants repair or replace damaged property before claiming?**
A: Claims will be assessed based on claimants' proof of loss, rather than proof of repair or replacement. This allows more timely settlements and allows claimants to rebuild their homes and lives with less hardship and inconvenience.

Section 3(2)(b) and (c) of the act states that EMO will determine, in the case of property damage or economic loss, whether artificial flooding damaged the property or caused the economic loss. EMO will also determine whether it is eligible property or whether it is an economic loss. Section 4(2) of the act states compensation is not conditional on the claimant repairing or replacing the damaged property.

12. Q: Will there be compensation for reduced property values?

A: There will not be compensation for reduced value of property. The floodway expansion will have positive effects on communities and properties south of Winnipeg, which will benefit Red River Valley residents. Expansion of the floodway will greatly reduce both the frequency and magnitude of artificial flooding.

13. Q: Will artificial flooding victims be compensated for personal suffering?

A: When artificial spring flooding occurs, claimants will be fully compensated for all property damage and economic loss caused by floodway operation, but personal suffering will not be covered in the regulations. The degree of claimants' personal suffering would be highly variable, making fair quantification extremely challenging.

With any disaster, personal stress is an unavoidable part of life. Coverage of property damage and economic loss with no claims ceiling and no deductible, combined with timely claims payments based on proof of loss is the goal of the legislation.

14. Q: Is summer flooding covered?

A: Residents affected by any artificial summer flooding have been compensated over the past five years and will continue to be compensated.

15. Q: Why are individual agreements and advance compensation not available?

A: The legislation is a binding, formal, public commitment to compensate for economic loss and/or property damage caused by artificial spring flooding. Negotiating separate agreements with thousands of potentially affected parties for unpredictable future damage or loss is not practical or reasonable.

Because an extreme spring flood is likely to be a rare occurrence, compensating current residents for an event that might not occur during their lifetimes would take public funds away from projects where they are needed (such as a future disaster that results in property damage and economic loss).

16. Q: Who will administer the compensation legislation?

A: Manitoba Water Stewardship will operate the floodway in accordance with the Rules of Operation and will publish a report on that operation. Manitoba's Emergency Measures Organization (EMO) will administer the compensation program, offering a one-stop claims procedure.

To improve claims processing, EMO may contract with insurance adjusters, structural engineers or other service providers to help assess property damage.With some structural modifications, the existing Disaster Assistance Appeal Board will provide an independent review of disputed claims.

17. Q: Why can't claimants sue the government for compensation?

A: Claimants have a personal choice. Section 7 of the act allows a person to claim compensation or sue. Claimants' cannot do both. Once a claim has be filed in the courts, or an application for compensation has been submitted under the act, claimants cannot change their minds and choose the other option.

18. Q: Is the legislation only effective when floodway expansion is complete?

A: The act is already in effect. It was proclaimed in June, 2005. It now requires the regulations to outline how the compensation process will work. Regulations are necessary to make the act effective and to avoid problems if artificial spring flooding occurs before there is a process in place for delivering the required compensation.

19. Q: Why was the act introduced before the floodway expansion was completed?

A: Compensation for artificial flooding has been an issue since 1997. The provincial government is committed to having fair, clear, compensation provisions in place in case there is another extreme flood. Compensation is not related to floodway expansion, so there is no need to delay.

20. Q: Are Red River Valley residents outside Winnipeg protected from extreme floods?

A: Since 1997, the province has invested about $130 million to flood-proof Red River Valley residents north and south of Winnipeg. Community ring dikes have been completed or upgraded in 20 communities.

Outside the community ring dikes, funding was provided for up to 75 per cent of flood proofing projects, up to a maximum of $70,000. (Ex: relocate buildings, raise them onto pads, terrace around their foundations, build ring dikes, etc.) A buyout option existed for properties that could not be flood-proofed in a cost-effective way.

About 80 to 90 per cent of rural properties in the valley are now flood-proofed to the 1997 level.